

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

David Sima,)	
)	
Plaintiff,)	Case No. 08 C 317
)	
v.)	Judge William Hart
)	
Board of Education of Township High)	
School District 214,)	
)	
Defendant.)	

DEFENDANT’S MOTION TO DISMISS COUNT III OF PLAINTIFF’S COMPLAINT

Defendant Board of Education of Township High School District 214 (the “District”) moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Count III of the Complaint of Plaintiff David Sima (“Sima”).

1. On November 28, 2007, Sima filed a four-count complaint alleging breach of an employment contract (Count I); a petition for writ of *certiorari* (Count II); violation of Sima’s procedural due process rights under the Due Process Clause of the United States Constitution (the “Due Process Clause”) (Count III); and violation of Sima’s substantive due process rights under the Due Process Clause (Count IV). This motion is directed to Count III only.

2. Under the Due Process Clause, “something *less* than a full evidentiary hearing” is expressly permitted prior to an adverse administrative action. Id. quoting Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532, 538-39 (1985) (emphasis supplied). More specifically, the “essentials” of procedural due process merely consists of “notice and an opportunity to respond.” Raines v. Indianapolis Pub. Sch., 52 Fed. Appx. 828, 831-2 (7th Cir. 2002)

3. By the allegations of his own complaint, Sima concedes that he received notice of his pre-termination hearing and was provided an opportunity to respond before the District’s

Board, with his lawyer, as provided in his employment contract. (*Comp.*, ¶¶20-24.)

4. Accordingly, Count III must be dismissed because Sima received sufficient procedural due process prior to his termination.

5. In further support, the District submits its Brief in Support of Defendant's Motion to Partially Dismiss Plaintiff's Complaint, which has been electronically filed contemporaneously with this motion.

WHEREFORE, the District requests the Court dismiss Count III of the Plaintiff's complaint, with prejudice, and grant it such other relief as the Court deems appropriate.

Respectfully submitted,

BOARD OF EDUCATION OF TOWNSHIP HIGH
SCHOOL DISTRICT 214

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Dated: February 5, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **DEFENDANT'S MOTION TO DISMISS COUNT III OF PLAINTIFF'S COMPLAINT** has been filed using the CM/ECF system and will send notification of same to the following counsel of record this 5th day of February, 2008:

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